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SACRAMENTO COURTS  
DEPT. #53 #54

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SACRAMENTO

FAIR POLITICAL PRACTICES COMMISSION,  
a state agency,

Plaintiff,

v.

SANTA ROSA INDIAN COMMUNITY OF THE  
SANTA ROSA RANCHERIA dba PALACE  
BINGO AND PALACE INDIAN GAMING  
CENTER, and DOES I-XX,

Defendants.

Case No. 02AS04544

DECLARATION OF ALAN  
HERNDON IN OPPOSITION TO  
MOTION TO QUASH

Date: February 20, 2003

Time: 9:00 a.m.

Dept: 54

Judge: Hon. Joe S. Gray

Action filed July 31, 2002

No Trial Date Set

I, Alan Herndon declare:

1. I am over the age of 18 years. My business address is: Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814. The facts set forth herein are personally known to me, and if called upon to testify, I could and would competently do so. I am submitting this

1 declaration in support of the California Fair Political Practices Commission's opposition to the motion  
2 to quash filed by Defendant Santa Rosa Indian Community of the Santa Rosa Rancheria ("Defendant  
3 Santa Rosa Rancheria").

4         2. I am the Chief Investigator for the Enforcement Division of the Fair Political Practices  
5 Commission (the "FPPC"), and have been so employed since 1983. I graduated from California State  
6 University at Fresno with a degree in Accounting in 1972. In 1972, I went to work for the Franchise  
7 Tax Board (the "FTB") as an auditor. In 1975, I began working for the  
8 Program. In 1975, I was loaned for five months to the Board of Equalization to conduct campaign  
9 audits under the Waxman-Dymally Act (the predecessor to the Political Reform Act). From 1977 to  
10 1978, for sixteen months, I was on loan from the Franchise Tax Board to the Technical Assistance  
11 Division of the FPPC, working in a consulting capacity and assisting in enforcement matters. From  
12 1978 to 1980, I worked as an auditor with the Franchise Tax Board's tax program. In 1980, I returned  
13 to the FPPC and worked in the Enforcement Division as an Accounting Specialist until I was promoted  
14 to Chief Investigator in 1983.

15         3. The FPPC is statutorily charged with the duty to vigorously enforce the provisions of the  
16 Political Reform Act of 1974 (the "Act," Gov. Code § 81000, et seq.). As the Chief Investigator, I am  
17 responsible for managing the statewide investigative unit of the Enforcement Division of the FPPC,  
18 including the development of policies and procedures. I organize and direct the investigative unit to  
19 meet the FPPC's statutory mission of vigorous enforcement of the Act. I supervise seven investigators,  
20 two Accounting Specialists, two Political Reform Consultants, and an Associate Governmental  
21 Program Analyst. To date, the Enforcement Division has opened files on over one thousand complaints  
22 during calendar year 2002. Among my job duties, I oversee the intake and initial evaluation of all  
23 complaints regarding violations of the campaign reporting provisions of the Act. At the conclusion of  
24 the intake process, I make a recommendation to the Chief of Enforcement as to whether a given case  
25 will be referred for full investigation or closed. If a case is referred for full investigation, the case is  
26 assigned to an investigator or auditor, and an attorney. I oversee the course of all of the investigations,  
27 and have regular case review meetings with Enforcement Division personnel to review their progress  
28

1 on assigned cases. I have also provided training to the California District Attorneys' Association on  
2 enforcement of the Act.

3 4. In the course of performing my duties as Chief Investigator, I have become thoroughly  
4 familiar with the operation of the Act's campaign reporting scheme, as it pertains to the ability of the  
5 Commission to enforce the campaign reporting provisions of the Act. I have also been integrally  
6 involved in the implementation of various amendments to the campaign reporting provisions of the Act  
7 that have been passed by the People of the State of California, with the general goal of increasing the  
8 level of disclosure of campaign finances at the state and local levels. In a similar vein, the People of  
9 the State of California have, on at least two occasions, voted to strengthen the enforcement provisions  
10 of the Act to ensure compliance with the Act's campaign reporting provisions. In this regard,  
11 Proposition 34, the most recent campaign finance reform measure passed by the People of the State of  
12 California in November of 2000, included, among other modifications to the Act, increased financial  
13 penalties for violations of the Act, as well as monetary limitations on contributions to state candidates  
14 and state political committees.

15 5. Among the long-standing provisions of the Act is a provision that any person who  
16 makes contributions of \$10,000 or more to political candidates and/or committees in a calendar year  
17 must file periodic campaign statements reflecting that person's contribution activity during the  
18 applicable campaign reporting period. Such contributors become "major donor" committees under the  
19 Act. The primary manner by which violations of the major donor provisions of the Act are uncovered  
20 is through campaign reporting by recipient committees. If a recipient committee's campaign statement  
21 shows receipt of a contribution of \$10,000 or more from a person, and there is no record of that person  
22 having filed a major donor campaign statement, there is a strong likelihood that there has been a  
23 violation of the Act by the contributor. Conversely, if a major donor campaign statement shows a large  
24 contribution to a recipient committee which is not disclosed on the recipient committee's campaign  
25 statement, there is a strong likelihood that there has been a violation of the Act by the recipient  
26 committee. This ability to cross-check campaign statements is an important investigative tool for  
27 enforcing the Act, which, if not available, would result in a significant increase in the number of  
28 violations of the Act that go undetected.

1           6.       The Act also contains late contribution reporting provisions for the reporting of large  
2 contributions made to a candidate or political committee in close proximity to the date of an election.  
3 Because of the potential impact of large “11<sup>th</sup> hour” contributions on the outcome of an election, the  
4 Enforcement Division places a strong emphasis on the enforcement of these provisions of the Act, to  
5 ensure that late contributions are timely reported *before* the subject election. Under the late  
6 contribution campaign reporting provisions of the Act, when a major donor committee makes a  
7 contribution of \$1,000 or more to a candidate, a candidate’s controlled committee, or a committee  
8 primarily formed to support or oppose a candidate or ballot measure in the last 16 days preceding an  
9 election, the contributor must file a late contribution report within 24 hours of making the contribution.  
10 Conversely, the recipient candidate or committee must file a late contribution report within 24 hours of  
11 receiving the contribution. The ability to cross-check a contributor’s late contribution report against a  
12 recipient committee’s late contribution report is an important investigative tool in determining whether  
13 there has been a violation of the late contribution reporting provisions of the Act by either the  
14 contributor or the recipient of a contribution. Late contribution reporting violations may also be  
15 uncovered in the post-election campaign statements of the contributor and/or the recipient committee  
16 through similar cross-checking. Again, the ability to cross-check the contributor’s campaign statement  
17 against the recipient committee’s campaign statement is an important investigative tool in determining  
18 whether there has been a violation of the late contribution reporting provisions of the Act. If this tool  
19 were not available, it would result in a significant increase in the number of violations of the Act that  
20 go undetected.

21           7.       Another method of enforcing the Act is the auditing of the campaign statements and  
22 financial records of a committee. If Defendant Santa Rosa Rancheria does not have to comply with the  
23 Act, it will not be required to maintain campaign financial records, nor will its campaign financial  
24 records be subject to review during an audit or investigation to determine whether it has engaged in  
25 unlawful campaign practices alone or in concert with non-tribal entities or persons.


26           8.       The advent of contribution limits under Proposition 34 represents a significant change in  
27 the campaign finance system. If Defendant Santa Rosa Rancheria, as a major contributor and/or a  
28 recipient committee, does not have to comply with the Act, it will provide a potential vehicle for

1 circumvention of the contribution limits, and the laundering of contributions from non-tribal sources,  
2 because there will be no requirement of accurate and truthful disclosure of such non-tribal sources of  
3 contributions.

4 9. Attached hereto and incorporated herein by reference as Exhibit A is a true and complete  
5 copy of a chart that I have prepared to illustrate the impact on various disclosure provisions of the Act,  
6 if one party to various transactions is not subject to the provisions of the Act. As discussed above, this  
7 chart illustrates that in numerous reporting situations there would only be single-sided reporting,  
8 leaving the disclosure scheme dependent on the honesty and accuracy of a single party. Moreover, with  
9 regard to independent expenditures, which are already a major form of campaign activity and are  
10 expected to increase greatly with the advent of contribution limits, if the party making the expenditure  
11 is not subject to the Act, there will be no reporting whatsoever.

12 10. In the course of my oversight of the full scope of investigative activity in the  
13 Enforcement Division, and my other duties as the Chief Investigator, I am well aware that federally  
14 recognized Indian tribes involved in gaming operations in the State of California have become “major  
15 players” in California politics. In the last five years, Defendant Santa Rosa Rancheria has contributed  
16 more than five hundred thousand dollars (\$500,000) to statewide propositions, political parties, and  
17 state and local candidates. There are numerous other federally recognized Indian tribes in the state that  
18 have contributed even more money to statewide propositions, political parties, and state and local  
19 candidates. If Defendant Santa Rosa Rancheria, and by inference all other federally recognized Indian  
20 tribes, are not required to comply with the Act, the ability of the Enforcement Division to enforce the  
21 Act will be severely undermined, not only as to the tribes, but as to any and all recipients of  
22 contributions from them, and contributors to them. As recipients of tribal contributions include state  
23 elected officials, political parties, and numerous statewide ballot measure committees, the entire  
24 campaign reporting scheme enacted by the People of the State of California will be jeopardized.

1 I declare under penalty of perjury under the laws of the State of California, that the foregoing is  
2 true and correct. Executed on February 5, 2003 at Sacramento, California.

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5 Alan Herndon, Chief Investigator  
6 Fair Political Practices Commission  
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